

Introduced by Senator LiuFebruary 12, 2013

An act to amend Section 647 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 244, as introduced, Liu. Disorderly conduct.

Under existing law, a person who commits certain acts, including soliciting or agreeing to engage in or engaging in any act of prostitution, as specified, is guilty of disorderly conduct, a misdemeanor.

This bill would make a technical, nonsubstantive change to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 647 of the Penal Code is amended to
2 read:
3 647. Except as provided in subdivision (l), every person who
4 commits any of the following acts is guilty of disorderly conduct,
5 *an offense punishable as a misdemeanor*:
6 (a) Who solicits anyone to engage in or who engages in lewd
7 or dissolute conduct in any public place or in any place open to
8 the public or exposed to public view.
9 (b) Who solicits or who agrees to engage in or who engages in
10 any act of prostitution. A person agrees to engage in an act of
11 prostitution when, with specific intent to so engage, he or she
12 manifests an acceptance of an offer or solicitation to so engage,
13 regardless of whether the offer or solicitation was made by a person

1 who also possessed the specific intent to engage in prostitution.
2 No agreement to engage in an act of prostitution shall constitute
3 a violation of this subdivision unless some act, in addition to the
4 agreement, is done within this state in furtherance of the
5 commission of an act of prostitution by the person agreeing to
6 engage in that act. As used in this subdivision, “prostitution”
7 includes any lewd act between persons for money or other
8 consideration.

9 (c) Who accosts other persons in any public place or in any
10 place open to the public for the purpose of begging or soliciting
11 alms.

12 (d) Who loiters in or about any toilet open to the public for the
13 purpose of engaging in or soliciting any lewd or lascivious or any
14 unlawful act.

15 (e) Who lodges in any building, structure, vehicle, or place,
16 whether public or private, without the permission of the owner or
17 person entitled to the possession or in control of it.

18 (f) Who is found in any public place under the influence of
19 intoxicating liquor, any drug, controlled substance, toluene, or any
20 combination of any intoxicating liquor, drug, controlled substance,
21 or toluene, in a condition that he or she is unable to exercise care
22 for his or her own safety or the safety of others, or by reason of
23 his or her being under the influence of intoxicating liquor, any
24 drug, controlled substance, toluene, or any combination of any
25 intoxicating liquor, drug, or toluene, interferes with or obstructs
26 or prevents the free use of any street, sidewalk, or other public
27 way.

28 (g) When a person has violated subdivision (f), a peace officer,
29 if he or she is reasonably able to do so, shall place the person, or
30 cause him or her to be placed, in civil protective custody. The
31 person shall be taken to a facility, designated pursuant to Section
32 5170 of the Welfare and Institutions Code, for the 72-hour
33 treatment and evaluation of inebriates. A peace officer may place
34 a person in civil protective custody with that kind and degree of
35 force which would be lawful were he or she effecting an arrest for
36 a misdemeanor without a warrant. No person who has been placed
37 in civil protective custody shall thereafter be subject to any criminal
38 prosecution or juvenile court proceeding based on the facts giving
39 rise to this placement. This subdivision shall not apply to the
40 following persons:

1 (1) Any person who is under the influence of any drug, or under
2 the combined influence of intoxicating liquor and any drug.

3 (2) Any person who a peace officer has probable cause to believe
4 has committed any felony, or who has committed any misdemeanor
5 in addition to subdivision (f).

6 (3) Any person who a peace officer in good faith believes will
7 attempt escape or will be unreasonably difficult for medical
8 personnel to control.

9 (h) Who loiters, prowls, or wanders upon the private property
10 of another, at any time, without visible or lawful business with the
11 owner or occupant. As used in this subdivision, “loiter” means to
12 delay or linger without a lawful purpose for being on the property
13 and for the purpose of committing a crime as opportunity may be
14 discovered.

15 (i) Who, while loitering, prowling, or wandering upon the private
16 property of another, at any time, peeks in the door or window of
17 any inhabited building or structure, without visible or lawful
18 business with the owner or occupant.

19 (j) (1) Any person who looks through a hole or opening, into,
20 or otherwise views, by means of any instrumentality, including,
21 but not limited to, a periscope, telescope, binoculars, camera,
22 motion picture camera, camcorder, or mobile phone, the interior
23 of a bedroom, bathroom, changing room, fitting room, dressing
24 room, or tanning booth, or the interior of any other area in which
25 the occupant has a reasonable expectation of privacy, with the
26 intent to invade the privacy of a person or persons inside. This
27 subdivision shall not apply to those areas of a private business
28 used to count currency or other negotiable instruments.

29 (2) Any person who uses a concealed camcorder, motion picture
30 camera, or photographic camera of any type, to secretly videotape,
31 film, photograph, or record by electronic means, another,
32 identifiable person under or through the clothing being worn by
33 that other person, for the purpose of viewing the body of, or the
34 undergarments worn by, that other person, without the consent or
35 knowledge of that other person, with the intent to arouse, appeal
36 to, or gratify the lust, passions, or sexual desires of that person and
37 invade the privacy of that other person, under circumstances in
38 which the other person has a reasonable expectation of privacy.

39 (3) (A) Any person who uses a concealed camcorder, motion
40 picture camera, or photographic camera of any type, to secretly

1 videotape, film, photograph, or record by electronic means, another,
2 identifiable person who may be in a state of full or partial undress,
3 for the purpose of viewing the body of, or the undergarments worn
4 by, that other person, without the consent or knowledge of that
5 other person, in the interior of a bedroom, bathroom, changing
6 room, fitting room, dressing room, or tanning booth, or the interior
7 of any other area in which that other person has a reasonable
8 expectation of privacy, with the intent to invade the privacy of that
9 other person.

10 (B) Neither of the following is a defense to the crime specified
11 in this paragraph:

12 (i) The defendant was a cohabitant, landlord, tenant, cotenant,
13 employer, employee, or business partner or associate of the victim,
14 or an agent of any of these.

15 (ii) The victim was not in a state of full or partial undress.

16 (k) In any accusatory pleading charging a violation of
17 subdivision (b), if the defendant has been once previously convicted
18 of a violation of that subdivision, the previous conviction shall be
19 charged in the accusatory pleading. If the previous conviction is
20 found to be true by the jury, upon a jury trial, or by the court, upon
21 a court trial, or is admitted by the defendant, the defendant shall
22 be imprisoned in a county jail for a period of not less than 45 days
23 and shall not be eligible for release upon completion of sentence,
24 on probation, on parole, on work furlough or work release, or on
25 any other basis until he or she has served a period of not less than
26 45 days in a county jail. In all cases in which probation is granted,
27 the court shall require as a condition thereof that the person be
28 confined in a county jail for at least 45 days. In no event does the
29 court have the power to absolve a person who violates this
30 subdivision from the obligation of spending at least 45 days in
31 confinement in a county jail.

32 In any accusatory pleading charging a violation of subdivision
33 (b), if the defendant has been previously convicted two or more
34 times of a violation of that subdivision, each of these previous
35 convictions shall be charged in the accusatory pleading. If two or
36 more of these previous convictions are found to be true by the jury,
37 upon a jury trial, or by the court, upon a court trial, or are admitted
38 by the defendant, the defendant shall be imprisoned in a county
39 jail for a period of not less than 90 days and shall not be eligible
40 for release upon completion of sentence, on probation, on parole,

1 on work furlough or work release, or on any other basis until he
2 or she has served a period of not less than 90 days in a county jail.
3 In all cases in which probation is granted, the court shall require
4 as a condition thereof that the person be confined in a county jail
5 for at least 90 days. In no event does the court have the power to
6 absolve a person who violates this subdivision from the obligation
7 of spending at least 90 days in confinement in a county jail.

8 In addition to any punishment prescribed by this section, a court
9 may suspend, for not more than 30 days, the privilege of the person
10 to operate a motor vehicle pursuant to Section 13201.5 of the
11 Vehicle Code for any violation of subdivision (b) that was
12 committed within 1,000 feet of a private residence and with the
13 use of a vehicle. In lieu of the suspension, the court may order a
14 person's privilege to operate a motor vehicle restricted, for not
15 more than six months, to necessary travel to and from the person's
16 place of employment or education. If driving a motor vehicle is
17 necessary to perform the duties of the person's employment, the
18 court may also allow the person to drive in that person's scope of
19 employment.

20 (l) (1) A second or subsequent violation of subdivision (j) is
21 punishable by imprisonment in a county jail not exceeding one
22 year, or by a fine not exceeding two thousand dollars (\$2,000), or
23 by both that fine and imprisonment.

24 (2) If the victim of a violation of subdivision (j) was a minor at
25 the time of the offense, the violation is punishable by imprisonment
26 in a county jail not exceeding one year, or by a fine not exceeding
27 two thousand dollars (\$2,000), or by both that fine and
28 imprisonment.